IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6301 of 1997

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DIVISIONAL CONTROLLER - Petitioner(s)

Versus

RAMANBHAI HIMMATBHAI PARMAR - Respondent(s)

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Appearance :

MR YOGESH S LAKHANI for Petitioner No(s).: 1.

MR JOY MATHEW for Respondent No(s).: 1.

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CORAM :HON'BLE MR JUSTICE KS JHAVERI

Date : 06/07/2005

ORAL JUDGMENT

1.0 The petitioner Corporation has challenged the order dated 22.01.1997 passed by the Labour Court, Baroda in

Reference LCV No.573 of 1995, whereby the Labour Court has directed the petitioner to reinstate the respondent with continuity in service and 50 per cent back wages.

2.0 The respondent was working as a Conductor with the petitioner Corporation. On 31.08.1993, while the respondent was on duty, the bus was checked by the checking squad of the petitioner and they found certain irregularities in the issuance of tickets. Charge-sheet was issued and departmental inquiry was held against the respondent. Since the charges levelled against the respondent were proved, he was dismissed from service on 31.12.1993.

2.1 Being aggrieved by the said order, the respondent preferred a reference before the Labour Court, Baroda. The Labour Court, by impugned order dated 22.01.1997, allowed the said reference as aforesaid. Hence, this petition.

3.0 I have heard learned counsel for the parties and perused the documents placed on record. While exercising powers under Section 11(A) of the Industrial Disputes Act, 1947, the Labour Court has not imposed any penalty, while substituting the order of dismissal passed by the petitioner Corporation. In my opinion, the Labour Court ought to have imposed some penalty, while granting the respondent reinstatement with continuity in service.

3.1 Moreover, the Labour Court has not given any cogent reasons as to on what basis it has awarded 50 per cent back wages to the respondent. Keeping in mind the principle laid down by the Apex Court that a workman shall be entitled for back wages only if he has worked for the interim period, the respondent herein cannot be said to be entitled for

back wages. Hence, the impugned order of the Labour Court is required to be modified to the above extent.

4.0 In above view of the matter, this petition is partly allowed. The impugned order of the Labour Court, qua directing the petitioner to reinstate the respondent with continuity in service is confirmed and the direction qua granting 50 per cent back wages is quashed and set aside. Further, a penalty of stoppage of one increment with future effect is ordered to be imposed on the respondent. The respondent shall be entitled for salary from the date of the publication of the award till he is reinstated in service. The payment accruing thereto shall be made within a period of three months from the receipt of writ of this order. Rule is made absolute to the aforesaid extent with no order as to costs.

(K. S. JHAVERI, J.)

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